IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6711 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SITRAM BALA

Versus

VARUN CARRIERS

Appearance:

1. Special Civil Application No. 6711 of 1995

MR NR SHAHANI for Petitioner No. 1-4

MR. KARTIK THAKER for M/S TRIVEDI & GUPTA for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/04/2004

ORAL JUDGEMENT

The short question involved in this petition is whether the Principal Judge, Labour Court was right when he dismissed the References by order dated 27th March,

1995 passed below application at Exh.9, submitted by the present respondent namely Varun Carriers.

1.1. From the record of the petition, it appears that the respondent was a Contractor engaged by the railways from loading and unloading railway wagons for which he had hired labourers. The contract was for a period of three years and the present petitioners were the workmen working under the respondents. The contract was executed between the railways and the respondent on 1st September, 1991. The present petitioners while working for the respondent raised industrial dispute. The dispute ultimately, came to be referred to the Labour Court for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947 vide order of the Assistant Labour Commissioner, Ahmedabad, dated 27th July, 1992. The petitioners filed statement of claim, wherein several averments were made challenging the order of dismissal passed against him.

1.2. As against that the respondent by filing written statement challenged the jurisdiction of the Labour Court and also the competence of Assistant Labour Commissioner to make References. In view of the separate application that was filed at Exh.9 raising certain objections on the aforesaid line filed by the respondent in all the Reference cases i.e. Reference (L.C.A.) Nos. 1635/92, 1636/92, 1639/92 and 1640/92, the Labour Court proceeded to decide the objections as preliminary issue.

2. On the strength of the material produced before it, the Labour Court came to the conclusion that since the respondent was working on contract for the railways, under the provisions of Contract Labour (Regulations & Abolition) Act, dispute between the workman and the contractor ought to have been referred by the competent authority of the Central Government and not of the State Government, since in relation to the said Act, the "appropriate Government" was Central Government. In view of the aforesaid opinion, the Labour Court by order dated 27th March, 1995, granted application at Exh.9 and also dismissed the aforesaid References. It is this order which is now under challenge.

3. Mr. N.R. Shahani learned advocate appearing for the petitioners has submitted that this is a dispute between the Contractor and his workmen. The railways have nothing to do with it. The Central Government, therefore, cannot be the "appropriate Government" in case of the petitioners and it is the State Government which could refer the dispute for adjudication under Section 10

(1) (c) of the Industrial Disputes Act. He has, therefore, submitted that the decision of the Labour Court is erroneous and it is required to be quashed and set aside.

3.1. As against that Mr. Kartik Thaker learned advocate for M/s. Trivedi & Gupta for the respondent has submitted that the respondent, under contractual obligation, was working for the railways. Hence the dispute ultimately was concerning the railways and, therefore, the Central Government was the "appropriate Government" for making Reference under Section 10 (1) (c) of the Industrial Disputes Act. He has supported the decision of the Labour Court and has also cited several decisions to substantiate his averments.

4. The question, therefore, requires to be decided is which is the "appropriate Government" in relation to the dispute existing between the Contractor who is engaged by the Central Government agency and his workmen.

4.1. It may be noted here that this definition has been literally lifted from the Industrial Disputes Act, by the legislature for the purpose of provisions of Contract Labour (Regulation & Abolition) Act, 1970 also.

Section-2

"2. Definitions :-(1) In this Act, unless the context otherwise requires [(a) "appropriate Government" means :-

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 12947 is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;]

So far as the definition of the "appropriate Government" under Industrial Disputes Act is concerned, it is contained in Section 2 clause (a) (i). The definition starts as "in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government or by railways ..... it is the Central Government which is the appropriate Government and in Clause (ii) thereof, it is stated that "in relation to any other industrial

dispute, the State Government."

5. Thus, for the purposes of both these acts, Central Government will be the "appropriate Government", if in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company exists. This definition is being examined in relation to the facts of the present case alone and, therefore, rest of the definition is not being considered by me.

5.1. So far as the facts of this case are concerned, the employees are engaged by the respondent to carry out the work for railways. The petitioners are, therefore, not directly engaged by the railways. There is no privity contract between the petitioners and the railway company, but it is the respondent who has executed the contract with the railways for the purpose of loading and unloading wagons. The present petitioners, therefore, incidentally carry out the work of the railway company, but they are not the direct employees of it. The case of the respondents is not that the petitioners have been dismissed on account of any dispute concerning principal employer namely the railways. It is the case of the respondents that the petitioners are causal labourers and they have been engaged by him for the purpose of fulfilling the contractual obligation. The nature of the dispute is not placed on record of this petition. However, it does not appear to be either concerning the industry owned by the Central Government or the railways. If that be so, it will not stand covered under Section 2 (a) (i) of the Industrial Disputes Act. However, Mr. Thaker has placed reliance on the decision rendered by different High Courts. The first decision cited by Mr. Thaker is in the case of Continental Construction (P.) Ltd., v. The Government of India reported in 1977 Labour Industrial Cases, 1199, wherein the Division Bench of the Andhra Pradesh High Court has held that :-

> "The word "concerning" appearing in Section 2 (a) (i) which defines "appropriate Government" must be construed in a reasonable manner, and referring to such industrial disputes only which have got a proximate, intimate and real connection with the Corporations or authorities mentioned in the said definition."

5.2. If the facts of the present case are seen, dispute can, in no way, be said to be concerning the

railways. The petitioners have been dismissed from the service by the contractor for his own reasons and it has nothing to do with the working of loading and unloading. The record even does not show that the said activity is likely to be hampered or adversely affected with the dismissal of these workers. If that be so, it cannot be said to be dispute concerning railways and this decision, therefore, will not help Mr. Thaker. It may be noted here, that the dispute that is in focus, actually should concern either the category of the industry mentioned in this definition or the railway company. It is, therefore, to be considered whether the disputes have any connection or they are concerned with the activity of the contractor. Can a dispute be said to be concerning railways only because of the fact that at that point of time, the contractor was discharging work of railway department; inspite of the fact that it is for the reason not at all connected with the contractual activity of the contractor concerning Railways i.e. principal employer. It is difficult to say that even a dispute in the nature of a private feud between the contractor and the concerned workman would be concerning railways. Any order of dismissal passed on that count by the contractor will not have any bearing on the activity that the contractor was carrying on under the contract with the Principal employer.

5.3. Another decision cited by Mr. Thaker is by the Apex Court rendered in the case of Steel Authority of India Ltd. v. National Union Water Front Workers reported in A.I.R. 2001 S.C. 3527. Mr. Shahani has also placed reliance on this decision and has pointed out paragraph 30 :-

> "30. From the above discussion, it follows that the phrase any industry carried on under the authority of the Central Government implies an industry which is carried on by virtue, of, pursuant to, conferment of, grant of, or delegation of power or permission by the Central Government to a Central Government Company or other Government Company / undertaking. To put it differently, if there is lack of conferment of power or permission by the Central Government to a Government company or undertaking it would disable such a company / undertaking to carry on the industry in question."

He has, therefore, submitted that there is no conferment of power or permission on railways by the Central Government for the activity of loading and unloading by the contractor. It is, therefore, not an industry carried on by virtue, of, pursuant to, conferment of, grant of, or delegation of power of permission by the Central Government and, therefore, it will not stand covered under Section 2 (a) (i) of the Industrial Disputes Act.

5.3. Yet another decision has been relied on by Mr. Thaker of Orissa High Court rendered in the case of Ambika Prasad v. State of Orissa reported in 1974 Labour Industrial Cases 805. On reading the facts of that case, it appears that the dispute existed between the contractors and its employees in respect of the activity of loading and unloading business of minerals at the Barbil Railway Siding in the district of Keonihar. The decision, therefore, relates to the dispute which had direct concern with the activity that was concerning. The dispute was over recommendations of the Central Wage Board for Iron and Ores Mining Industry of the Government of India. In this decision, it also appears that the High Court has placed reliance on the definition of the "appropriate Government" given in Section 2 (a) (i) of the Industrial Disputes Act and has placed reliance on the definition of the "Mine" as given in the Mines Act, 1952. These facts are not similar to the facts of the present case and the said decision, therefore, will not help Mr. Thaker.

5.4. A conjoint reading of sub-section (1) of section 2 of the Industrial Disputes Act as well as Contract Labour [Regulations & Abolition] Act shows that the present case will not be covered under these provisions and therefore, Central Government cannot be the 'appropriate Government'.

6. In view of the aforesaid, it clearly appears that the State Government is the "appropriate Government" vis-a-vis the dispute existing between the petitioners and the respondent. It is the appropriate or Competent authority to make the References under Section 10 (1) of the Industrial Disputes Act to the Labour Court. The Labour Court is, therefore, directed to hear and adjudicate the aforesaid References on merits since the same are very old. The Labour Court is directed to hear and decide them on or before 31st March, 2005.

With these directions, the petition is allowed. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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